DISTRICT RESPONSE TO UTLA'S "PUBLIC SCHOOL ACCOUNTABILITY" PROPOSAL

The Proposal: UTLA's "Public School Accountability" Bargaining Proposal of October 2, 2014 ("the Proposal"), requests that the District grant authority and control to UTLA, via the collective bargaining process and inclusion in the District-UTLA Collective Bargaining Agreement, over the following subject matters affecting the rights of charter schools and also affecting the LAUSD Board of Education's own obligations, rights and authority with respect to charter schools. Such subject matters covered by the Proposal include the following examples:

- The surveys, studies and reports to be required prior to the consideration of any new school, co-location, or re-organization of any existing school;
- The approval, removal and recall of charter school governing board members, including the right to recall by petition or vote of staff;
- The regulation of conflicts of interest by charter school governing boards, employees and agents, including financial disclosure obligations;
- The location of charter school governing board meetings;
- Charter school compliance with the public records laws, public meeting laws, and collective bargaining laws;
- The percentage of charter school budgets to be allocated for classroom and pupil services staffing;
- The number of Special Education and/or English Language Learning, minority students, and students receiving free and reduced priced meals in each charter school;
- Student suspensions, expulsions and dismissals in charter schools;
- Charter school participation in the state Free and Reduced Priced Meals programs;
- Charter school compliance with health and safety laws;
- The rights of charter school students, parents, administrators, staff and community regarding the setting of educational policies and practices;
- Content of notices to charter school parents regarding children's rights to certain services, learning environment and access to resources;

- The rights of parents in charter schools, and required complaint processes for parents;

- Charter school employment policies and practices, including conditions and compensation;

- Employee protections in charter schools regarding due process, union organizing, complaints, and administrative influence;

- The LAUSD Board of Education role regarding voluntary or involuntary teacher turnover in charter schools.

The above-proposed delegations of significant public policy and governance authority and control to UTLA (a private, non-governmental organization), raise a number of serious and troubling issues concerning the validity, legal effectiveness and enforceability of the Proposal:

1. Beyond Scope of Negotiations and Contractual Inclusion: These subject matters appear on their face to exceed the proper scope of negotiations and of contractual inclusion under the California Government Code (EERA) involving, as they do, educational policy, structural/organizational matters, legal compliance and governance issues for both the District and the charter schools – subject matters which have also consistently been excluded from contractual coverage under the terms of Article III (District Rights) of the LAUSD-UTLA Agreement. These subject matters are instead (at most) matters for consultation (not collective bargaining or contractual inclusion), pursuant to the EERA and Article III of the LAUSD-UTLA Agreement. Also, the Proposal is an attempt by UTLA to bargain regarding, and to control conditions within, independent charter schools rather than in the District; as such, it exceeds the proper scope of negotiations and contract coverage with the District.

2. Unlawful Delegation of Authority: These proposed delegations of authority over charter schools would purport to deputize UTLA as a co-regulator of Charter Schools – a role that would exceed and be inconsistent with all applicable laws such as the Charter Schools Act of 1992. Those laws constrain even the Board's own authority over such matters, provide a specific limited and discrete oversight roles for the Board of Education and the County Office of Education and the State, prescribe procedures for the exercise of those limited oversight functions, and authorize charters to govern themselves as non-profit corporations pursuant to the California Corporations Code with reserved control over their own governance methods and educational programs. See Ed. Code Sec. 47611.5(e), which states that "the approval or a denial of a charter petition . . . shall not be controlled by collective bargaining agreements . . . ."

   We also refer UTLA to the *Locke* case which has effectively nullified Article XII-B of the LAUSD-UTLA Agreement, due to pre-emption by the Charter Schools Act.

3. Conflicts With Statutes: Several of the areas in which UTLA is seeking authority and proposing a governance role are in conflict with the laws which require that charter schools are to operate "independently from the existing school district structure" (Ed. Code Sec. 47601), thus exceeding the jurisdictional limits that are applicable to the LAUSD Board of Education itself – and/or are in conflict with other statutes. Some examples:

   A. The UTLA-proposed additional studies and reports to be required prior to consideration of any new school, co-location or re-organization of an existing school threaten – conflict with Ed. Code Sec. 47614 and CCR Title S, Sec. 11969.1 et seq., (Proposition 39 governing regulations). See also Ed. Code Sec. 4760S.

   B. The UTLA-proposed District interventions in the selection and removal of charter school governing board members exceed statutory authority (see Educ. Code Sec. 47604, which allows the District Board to appoint a single representative to the board of a charter school, and no other authority over that subject matter). That proposed Intervention also threatens to create District liability for the debts and obligations of the charter school (see Ed. Code Sec. 47604c and applicable non-profit law, which delegates board member selection to the non-profit itself).

   C. The UTLA-proposed regulation of charter school procurement practices is inconsistent with Ed. Code Sec. 47610.

   D. Charter schools are exempt from the UTLA-proposed mandatory utilization of the state Free and Reduced Price Meals program.

   E. The UTLA-proposed regulation of charter school compliance with the Educational Employment Relations Act is inconsistent with the statutory exclusive primary jurisdiction of PERB regarding such matters.

   F. UTLA already represents the employees of many charter schools, and is actively seeking to represent the employees of many other charter schools, in competition with other unions, in order to bargain with their charter school employers. UTLA's proposed authority over charter school employers, employees and operations therefore poses a variety of serious conflicting roles and conflicts of interest. UTLA would be bargaining with LAUSD to exercise controls and affect governance of the charter schools, at the same time that it is seeking to organize the charter school employees and compete with other unions for the privilege of bargaining with the charter schools. Then UTLA could bargain with the charter schools, holding over their heads UTLA's prominent LAUSD governance role and delegated authority over charter operations (including UTLA's proposed control over "conditions and compensation" at charter schools, and its proposed control over charter school compliance with the Educational Employment Relations Act). UTLA's Proposal (if

agreed upon) would make LAUSD an enabling contractual partner in these myriad UTLA overreaches and conflicts of interest, and thus expose the District to liability.

4. Duplication and Creation of Conflicts: In several other areas the Proposal duplicates current District oversight and administration of the charter school program, but even that would create operational, jurisdictional, compliance and remedial conflicts:

   A. Putting such subject matters into the collective bargaining agreements makes them burdensome to change in response to ongoing changes in law and needed improvements, as the subject matter would be locked down by contract and subject to being delayed along with other unresolved negotiations issues or as pressure for concessions on unrelated matters. These subject matters of governance and public policy, and of frequent legislative change, are unsuitable for contractual commitment to a private third party such as UTLA.

   B. In the event that disputes arise between the District and UTLA relating to District or charter school compliance with the terms of the Proposal (if it were made contractual), such disputes would presumably be subject to the contractual grievance and arbitration procedures, which would mean that enforcement by UTLA of the Proposal's requirements would be placed before labor arbitrators. Labor arbitrators have absolutely no experience in educational policy, charter school laws or governance issues. Also, the involved real parties in interest in such disputes – the charter schools – have no participation rights in such contractual arbitration proceedings. These jurisdictional and forum defects would likely cause ancillary litigation attacking the Proposal and the District's unlawful delegation of charter supervision authority to UTLA. Similarly, to the extent that the Proposal were to be adopted, charter schools would reasonably regard the agreement as a frontal assault on their statutory rights to autonomy and limited oversight, and particularly their rights not to be controlled or supervised by private parties such as UTLA who have no statutory standing to assert such controls or oversight. This would also cause instability and uncertainty within the charter school community and within the District offices charged with oversight and compliance with the charter school program, and thus additional likelihood of litigation, and District vulnerability to liability in such litigation.

   C. Administration and enforcement of the many regulatory and oversight functions encompassed within the Proposal would impose significant additional personnel and legal costs upon the District. The Proposal raises a number of major legal, jurisdictional, political and operational challenges. It conflicts with existing laws, policies and established decision-making authority, creating a thicket of confusion, duplication, conflicts and litigation among the District, the County and the Charter Schools. The Proposal would require creation of a significant new bureaucracy and legal team to administer and defend its dubious assumptions of authority.